IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 41 OF 2005

SMT. PRABHA DILIPKUMAR PRABHU MAHAMBRE AND ANR., ... Appellants

Versus

LAND ACQUISITION OFFICER, PANAJI GOA AND ORS., ... Respondents

Shri A. R. Kantak, Advocate for the appellants.

Coram :- R. M. LODHA, J.

Date :- 29th September, 2005.

P.C.

Heard Mr. A. R. Kantak, the learned Counsel for the appellants. The appeal from order is wholly frivolous and devoid of any substance. The contention of the learned Counsel for the appellants that the deposit of Rs.12,70,279/- by the respondent was not in conformity with the provisions of Order XXI, Rules (1) and (2) of the Code of Civil Procedure is misconceived. There is no merit in the contention of the learned Counsel for the appellants as well that at the time when the deposit of Rs.12,70,279/- was made, there was no valid decree subsisting. The Judgment of the Kerala High Court in the case of ***Union of India v. B. Bhogilal and another***, AIR 1992 Kerala 302 upon which reliance is placed by the learned Counsel has no application to the case in hand.

2. In paragraph 5 of the impugned order, the Executing Court observed thus :

> "Undoubtedly there is no dispute that amount to which Decree holder was entitled as per judgment of Hon'ble High Court was Rs.11,71,975.10 and that Decree holder has withdrawn the said amount. There is also no dispute that Judgment debtor had deposited an amount of Rs.12,70,279/- before Hon'ble High Court alongwith First Appeal No.75/1995. Further there is no dispute that vide order dated 15.4.2002 in MCA 452/2001 Hon'ble High Court had allowed Decree holder to withdraw Rs.11,71,975.10 alongwith accrued interest and balance amount of Rs.98,754/- was granted to Judgment debtor. Thus in such scenario I am of the view that Judgment debtor cannot be held responsible for payment of interest on the sum of Rs.11,71,975.10 since once the amount is deposited before the Court, responsibility of the Judgment debtor no longer continues. In fact it is not the lookout of judgment debtor to inform the Court as to in what manner the deposited amount should be invested and even for that matter, Judgment debtor is not bound to give notice of deposit to Decree holder. Things would be different if Judgment debtor had failed in its duty of depositing the amount in time. No, doubt, Hon'ble High Court has vide order dated 15.4.2002 had allowed Decree holder to withdraw Rs.11,71,975.10 with accrued interest, however in

> the light of above factual position, Judgment debtor cannot be held responsible for payment of interest on above amount, once it makes deposit of the amount due before the Court."

3. It is not in dispute that the respondents have deposited the amount of Rs.12,70,279/- which was in far excess to the amount to which the appellant was entitled. In the circumstances, there was no question of award of any interest on the amount that was already deposited. The appeal from order has no merit. Dismissed in limine.

R. M. LODHA, J.

ssm